

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

No. 1:10-mc-109

v

HON. GORDON J QUIST

MICHIGAN DEPARTMENT OF COMMUNITY
HEALTH,

MAG. U.S. DISTRICT JUDGE

Respondent.

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MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
MEMORANDUM OF LAW IN REPLY TO THE UNITED STATES' PETITION TO
ENFORCE DRUG ADMINISTRATION SUBPOENA

On November 4, 2008, the voters of Michigan passed the Michigan Medical Marihuana Act (Act), Initiated Law 1 of 2008, MCL 333.26421, *et seq.*, which became effective on December 4, 2008. The MMA allows a qualifying patient¹ with a debilitating medical disorder²,

¹ A "Qualifying patient" is a person diagnosed by a physician as having a debilitating medical disorder. MCL 333.26423(h).

² As defined in MCL 333.26423(a), (1), (2), and (3).

to use³ medical marihuana after obtaining a registry identification card from the Michigan Department of Community Health (DCH).⁴ The MMA also allows a primary caregiver to assist a qualifying patient in using the marihuana after obtaining a registry identification from the MDCH. MCL 333.26423(g).

The Act contains confidentiality provisions, stating “Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.” MCL 333.26426(h)(1). Disclosing confidential information is a misdemeanor offense, punishable by up to 6 months imprisonment or a fine of up to \$1,000.00. MCL 333.26426(h)(4).

On June 6, 2010, The United States Drug Enforcement Administration (DEA) served a subpoena on the Michigan Department of Community Health (DCH). Because the Act specifies a misdemeanor offense for violating the confidentiality provisions, DCH requested a valid court order before it could provide the information requested in the subpoena. DCH apprised the DEA of the situation and the DEA sought a court order, through the United States Attorney, in this Court. Pursuant to the Supremacy Clause of the U.S. Constitution, DCH understands it must comply with a valid court order to provide the requested information and that DCH, its employees and agents will be immunized from liability for providing information that is confidential under MCL 333.26426(h). *In re Grand Jury Subpoena*, 198 F. Supp. 2d. 1113, 1117 (D. Alaska 2002); *In re Grand Jury Matter*, 762 F. Supp. 333, 336 (S.D. Fla. 1991).

³ "Medical use," is defined as the acquisition, possession, cultivation, manufacture, use , internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition. MCL 333.26423(e).

⁴ DCH created a website for the Michigan Medical Marihuana Program (MMMP), which may be found at: http://www.michigan.gov/mdch/0,1607,7-132-27417_51869---,00.html.

Accordingly, DCH will comply with a valid order from this Court requiring DCH to comply with the DEA subpoena. The order should also make clear that, pursuant to the Supremacy Clause of the U.S. Constitution, DCH, its employees and agents will be immunized from liability for providing information that is confidential under MCL 333.26426(h).

Respectfully submitted,

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